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Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-fourth session
Agenda items 10 and 11

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[23 July 1992]

1. The International Federation of Human Rights (IFHR) and its United Kingdom affiliate in Northern Ireland, the Committee on the Administration of Justice (CAJ), are concerned about the absence of safeguards to prevent ill-treatment of detainees held under emergency legislation in Northern Ireland and constraints placed on their access to legal advice. Furthermore, we are concerned about the ongoing intimidation of lawyers in Northern Ireland by elements within the police force. The United Nations

Basic Principles on the Role of Lawyers (supported in General Assembly resolutions 45/121 of 14 December 1990 and 45/166 of 18 December 1990) and other international instruments set certain minimum standards, which in our view are being breached in Northern Ireland.

2. Since the early 1970s IFHR and other international non-governmental organizations have collected allegations of ill-treatment of detainees in Northern Ireland. In 1978 the European Court of Human Rights found in the case of Ireland v United Kingdom that the United Kingdom was subjecting detainees to inhuman and degrading treatment in Northern Ireland. More recently, in November 1991, the United Nations Committee Against Torture looked at renewed allegations of ill-treatment and expressed concern about the regime governing the detention of people held under emergency legislation in Northern Ireland.

3. Under this regime detainees can be held for up to seven days without being brought before a court. In 1988, in the case of Brogan v United Kingdom, the European Court of Human Rights found the seven day power to be in breach of article 5 (3) of the European Convention on Human Rights. The United Kingdom subsequently issued notices of derogation from the European Convention and the International Covenant on Civil and Political Rights.

4. There is no independent scrutiny of police interrogations during the prolonged period that detainees can spend in custody before being produced before a court. The Government has announced its intention to appoint an independent commissioner to visit the holding centres but no details of his or her powers are available as yet. The interrogations are not video or audio recorded.

5. Under Section 45 of the Northern Ireland (Emergency Provisions) Act 1991 detainees are frequently denied access to their lawyers for up to the first 48 hours of detention and for intervals of up to 48 hours thereafter. There is no right for detainees to consult their lawyers in private. In the view of IFHR and CAJ, this is in direct contravention of paragraph 8 of the Basic Principles on the Role of Lawyers which provides: "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials". Furthermore, lawyers are not allowed to be present during interrogations, a right afforded to people arrested under the same terrorism provisions in Great Britain and under the ordinary criminal law throughout the United Kingdom. Lay visitors who can visit detainees under the ordinary criminal law are not allowed access to the special holding centres where terrorist suspects are detained.

6. At present official policy stipulates that a police officer not involved in the interrogation should observe the interview via a silent, non-recorded television monitor. It has emerged that these monitors have not always been watched and that no disciplinary proceedings or criminal prosecutions of police officers have arisen from their use. In fact not one single complaint made by detainees in the last four years about ill-treatment during detention

in the holding centres has resulted in disciplinary action against a police officer. Complaints against the police are investigated by the police. In spite of the failure to discipline police officers the Government of the United Kingdom has paid large sums of money each year to settle claims for alleged ill-treatment of detainees by police officers.

7. The right to remain silent under questioning or at trial has been abrogated in Northern Ireland and thus undermines detainees' prerogative against self-incrimination. Furthermore, the standards governing the admissibility of confession evidence have been lowered to make it easier to admit such evidence under emergency legislation. IFHR and CAJ fear that the overall thrust of these changes has been to tend to force the detainee to incriminate him or herself contrary to article 14 (3) (g) of the International Covenant on Civil and Political Rights.

8. Detainees regularly report that police officers make threats against the lives of their lawyers, question their lawyers' professionalism and suggest that their lawyers are in the pay of or are members of terrorist groupings. Many of these alleged threats contain references to the murder in February 1989 of a Belfast solicitor, Mr. Patrick Finucane, who represented many detainees accused of terrorist offences. An international mission of lawyers, supported by IFHR, investigated the circumstances surrounding Mr. Finucane's murder which was claimed by "loyalist" paramilitaries.

9. One year before Mr. Finucane's death one of his clients, Mr. Brian Gillen, reported in a statement about ill-treatment during police detention that police told him that his lawyer would be killed. This was one of many such threats made against him before his death.

10. According to information collected by IFHR and CAJ, Mr. Finucane's death and the current threats against lawyers occur against a background of collusion between members of the security forces and loyalist paramilitaries. This collusion involves either the passing of security information or more active participation in illegal activities. Such has been the concern about this matter that an inquiry into the question of collusion was instituted by the police in September 1989.

11. This inquiry was completed in May 1990 by Mr. Stevens, Deputy Chief Constable of Cambridgeshire in England, and resulted in a large number of arrests although it failed to satisfy public concern as it concluded that "leakages of information may never be completely eliminated". One of those arrested as a result of the Stevens Inquiry was Mr. Brian Nelson. At his trial it emerged that he was working as a double agent for army intelligence and had infiltrated a loyalist paramilitary organization. According to recent information, made public in a television documentary of the British Broadcasting Corporation (BBC), Mr. Nelson and his security service supervisors knew Mr. Finucane was being targeted for assassination.

12. Three weeks before Mr. Finucane's death a Government minister, Mr. Douglas Hogg, stated during a Parliamentary Committee discussion that "a number of solicitors" in Northern Ireland were "unduly sympathetic to the Irish Republican Army". Despite being challenged Mr. Hogg refused to withdraw

his comments and went on to repeat the allegation using the same formula of words. His refusal came after a Member of Parliament from Northern Ireland warned that his comments could lead to the death of solicitors there.

13. As yet no one has been prosecuted for the murder of Mr. Finucane. It was revealed at the inquest into his death that he was killed by an army firearm stolen by a member of the British army and sold to a loyalist paramilitary group.

14. The Government has not provided any information on its investigation into the allegations of official collusion in Mr. Finucane's death. Mr. Finucane's death and the ongoing allegations from detainees that police officers are making theats against their lawyers has had a considerable effect on the situation of lawyers in Northern Ireland. In a recent BBC television programme made by CAJ, a lawyer said that the murder of Patrick Finucane had made lawyers realize that they "weren't immune from the violence ... and I think that fear's still there ...". Also in this programme a woman claimed that during her detention police told her that her lawyer would end up the same way as Patrick Finucane.

15. IFHR and CAJ believe that these practices comply with neither the letter nor the spirit of paragraphs 16, 17 and 18 of the United Nations Basic Principles on the Role of Lawyers which say:

> "16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference...
>
> 17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.
>
> 18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

In order to address these matters and to ensure that the Government of the United Kingdom complies with international human rights standards, IFHR and CAJ renew their proposal of a number of measures which would safeguard the rights of detainees and the position of lawyers:

- Immediate access for lawyers to their clients as soon as they are detained;
- The right for lawyers to be present during interrogations of their clients;
- The video and audio recording of all police interviews;
- The restoration of the right to remain silent;
- The issuing of threats or abuse against lawyers to be made a specific criminal and disciplinary offence;

- All interviews between lawyers and their clients to be conducted in private;

- The creation of an independent system to investigate complaints against the police;

- The establishment of an independent public inquiry into the circumstances surrounding the death of Patrick Finucane.

16. Furthermore, we respectfully request that the Sub-Commission urge the Government of the United Kingdom to ensure that its laws and the actions of its security forces in Northern Ireland fully comply with the United Nations Basic Principles on the Role of Lawyers.

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-fourth session
Agenda item 10

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Written communication submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[28 July 1992]

1. The International Federation of Human Rights (FIDH) and its affiliated member, the Organization of the Committees for the Defence of Democratic Freedoms and Human Rights in Syria (CDF), welcomed the release during the past two years of several thousand prisoners of opinion in Syria. According to the information gathered by our organizations, about 1,000 Lebanese, 2,500 Palestinians, 3,200 Syrians and 10 prisoners of varying nationalities have been released.

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2. However, FIDH and CDF are still deeply concerned about the fate of thousands of persons who are still being held, in complete violation of the rules of the international instruments for the protection of human rights concerning the administration of justice. According to CDF, nearly 7,000 prisoners of conscience and 3,000 disappeared persons are involved. Our organizations are particularly concerned about the arbitrary detention of several human rights activists who are members of CDF.

3. Eleven days after the closure of the forty-eighth session of the Commission on Human Rights, the State Security Court sentenced 10 persons after an unfair trial, and simply because they were members of CDF to penalties ranging from 5 to 10 years' imprisonment with forced labour, and deprived them of their civic rights. These persons are Nizar Nayouf (sentenced to 10 years' imprisonment), Aktham Nouaisseh (sentenced to 9 years' imprisonment), Muhammed Ali Habib (sentenced to 9 years' imprisonment), Bassam-al-Shaykh (sentenced to 8 years' imprisonment), Thabet Murad (sentenced to 5 years' imprisonment), Jadi'Nawfal (sentenced to 5 years' imprisonment), Ya'qub Musa (sentenced to 5 years' imprisonment), Hassan Ali (sentenced to 5 years' imprisonment) and Hussam Salama (sentenced to 5 years' imprisonment).

4. Admittedly, the Head of State has not confirmed their sentences. But they are still in prison and are in critical physical and mental condition: the lawyer Aktham Nouaisseh is paralysed on one side; he, the jurist Afif Mizher and the writer Nizar Nayouf all bear the scars of torture. They have been denied medical care and visits, although because of their condition they obviously need to be hospitalized.

5. The Syrian authorities have responded to the representations of the international non-governmental organizations by authorizing the military interrogation department to release Mrs. Nida'Chahoud and her daughter, Sarah, the poet Mahmud Abu Hamad and Mr. Amjad Bahbouha, as well as four CDF activists, namely Yaser Askif, Nazim Hassayn, Saner Nouaisseh, and Nabil Naus, two months after they were sentenced to three years' imprisonment. Reports have also been received that the prisoners who have been held for over 20 years will shortly be released. However, to date, only one person, Mr. Yusef Burji, has been released, and a further 23 are still in detention in critical condition. Thus, the state of health of Dr. Nour el-Din Atassi, who is being held in the Tishrin military hospital, is still very disquieting; Mr. Muhammed Id Ashshawi, Mr. Salah Jedid and Mr. Mahmud Fayyadh have still received no attention, despite the deterioration of their physical condition.

6. Other political prisoners who have been held since 1980 are also in critical condition. They are Mounif Moulhem, Riad al-Turk, Moustafa Khalifa, Abbas Abbas, Khaled Nasser and Hisham Zrouqi. Despite repeated requests by FIDH, the authorities have still not given the Federation permission to investigate their situation on the spot. The death in detention, on 16 April last, of Mr. Rif'at Ahmad Rajab, who was being held in Adra prison, proves, if proof was still needed, that the prisons must be opened up to the non-governmental organizations if their request for the unconditional and immediate release of the prisoners of opinion is not granted.

7. FIDH and CDF are also deeply concerned about the fate of 1,500 persons who were interrogated and of more than 40 persons who have been kept in administrative detention since 18 December 1991. According to our information, they were all subjected to torture during their interrogation. Besides the human rights and CDF activists mentioned above, the persons in question are: Dr. Abdelaziz Al-Khayyer, Mr. Bahjat Sha'bo, Dr. Muhammad Ghanem, the engineer Mounther Joum'a, Mr. Mahmoud Khadour, Mr. Abdallah Al-Fadhel, Mr. Nadim Mazlum, Mrs. Khadija Dib, Mr. Marwan Ghazi, Mr. Ahmad Ma'touq, the singer Turki Mouqdad, the engineer Jamal Yanes, the writer Salama George Kila, the Kurdish writer Ahmad Hasso, the engineer Abdelkarim Darwish, Mr. Amjad Kallas, Mr. Jamal Saleh Said and Mr. Jaffan Humsi.

FIDH and CDF are also disturbed over the fate of the persons who disappeared and about whom they had asked the Government for information. These persons are: Yousef Janat, Moudar al-Jundi, Abdelrahim Lazqani, Ousama al-Hassan, Jamal Sattam, Qasem al-Murched, Rashed al-Da'ass and Moussa al-Tahhan.

8. Lastly, FIDH and CDF are deeply worried about the increase in the number of trials that flout the rules of the right to a fair trial. In the last two months, the Syrian authorities have transferred prisoners from the Aleppo and Hims prisons, as well as many prisoners from the Palmyra prison, to the Sednaya and Adra prisons in order to try them in the State Security Court under Decree-Law No. 6, which established the state of emergency that has been in effect in Syria since 8 March 1963. Some one hundred persons accused of crimes against State security have already been interrogated by this court (see, for example, the list in the annex attached), without being given the minimum guarantees of the right to a fair trial, especially in respect of the independence and impartiality of the court, the rights of the defence, the presumption of innocence and the public nature of the proceedings.

9. The International Federation of Human Rights and the Committees for the Defence of Democratic Freedoms and Human Rights in Syria demand the immediate and unconditional release of all prisoners of opinion, the abolition of the emergency courts and the application in all proceedings of guarantees of the right to a fair trial, especially proceedings for crimes against State security. They further demand that a stop be put to the use of torture and that the perpetrators of acts of torture should be punished, and call upon the Sub-Commission to make a stand on this situation.

Annex

Indicative list of political detainees accused of crimes against State security who have already been interrogated by the State Security Court in violation of the rules of the right to a fair trial

(Surname, first name, occupation, date and place of birth, date of arrest, marital status, place of detention)

AL-FAWWAZ Ahmad Fayez (doctor)
1934, Ar Raqqah, 6 October 1990, married, 4 children, Adra Prison

QASHASH Umar (trade union leader)
1926, Aleppo, 6 October 1990, married, 6 children, Adra Prison

JAMOUS Fateh (mechanical engineer)
1948, Bisnada, married, 2 children, March 1982, Sednaya Prison

AL-KHAYYER Abdelaziz (doctor)
1951, Latakia, 1 February 1992, married, 1 child, military interrogation department

NAHHAS Nihad (student)
1953, Hamah, 16 May 1980, married, 1 child, Sednaya Prison

TU'MA Nash'at (lawyer)
1950, Dayr as Zawr, 25 December 1989, married, Sednaya Prison

TURK Riad (lawyer)
1930, Hims, 28 October 1980, married, 2 children, military interrogation department

AL-SAQAL Fadl (technician at the Tishrin newspaper)
1959, Dar'ja, 3 September 1987, married, 1 child, Sednaya Prison

GHANEM Muhammed (doctor)
1958, Latakia, 31 January 1992, military interrogation department

DARWISH Ali Sabr (member of the Teachers' Union)
1946, Salamiyah, 15 December 1987, married, 5 children, transferred from the Hims military prison, arrested four times previously, Sednaya Prison

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